Section-by-section Analysis of
Senate Bill 1277 / House Bill 2967
"State and Local Law Enforcement Discipline, Accountability, and Due Process Act 2003"

Prepared by
District of Columbia
Office of Citizen Complaint Review

Sec. 1. Short Title

This Act may be cited as the "State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2003."

There is a significant divergence between the title of the bill and what it would accomplish. A person who has not studied the text of the bill would read the title and assume that the primary purpose of the bill is to make state and local law enforcement agencies more accountable to the public. However, a review of the bill's provisions shows that the bill's effect would be to preempt already existing and effective local police accountability mechanisms. Furthermore, the inclusion of due process in the title is also misleading because it implies that law enforcement officers do not have due process rights, although as government employees and law enforcement officers they already enjoy substantial due process protections.

Sec. 2. Findings and Declaration of Purpose and Policy

a. Findings – Congress finds that --

(1) the rights of law enforcement officers to engage in political activity or to refrain from engaging in political activity, except when on duty, or to run as candidates for public office, unless such service is found to be in conflict with their service as officers, are activities protected by the first amendment of the United States Constitution, as applied to the States through the 14th amendment of the United States Constitution, but these rights are often violated by the management of State and local law enforcement agencies;

The work performed by the District of Columbia's Office of Citizen Complaint Review (OCCR) in no way threatens the political rights of members of the Metropolitan Police Department (MPD). All complaints investigated by OCCR are citizen initiated, and are investigated and decided by OCCR, which is independent of MPD. The independence of OCCR guarantees that MPD could not use OCCR as a way to punish those officers MPD management might single out. Furthermore, the political rights of officers are protected by the First Amendment as it is incorporated against the states through the Fourteenth Amendment.

(2) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their aggressive enforcement of the laws, demoralizing many rank and file officers in communities and States;

The District's Administrative Procedure Act and OCCR's regulations provide police officers with ample due process protection. The two laws combine to provide MPD officers with reasonable protection against unfair or discriminatory discipline. The result of the passage of S. 1277 / H.R. 2967 would be the creation of a double standard in the area of due process rights for public employees. If passed, the bill would create rights for state and local police officers that no other public employees possess. S. 1277 / H.R. 2967 would create two imbalances in the area of due process rights. The first imbalance is that when investigating their own officers, state and local law enforcement agencies would have many more restrictions in investigating their own officers than the U.S. Department of Justice would have if it were investigating a police department or individual police officers as part of a federal civil rights matter. The second imbalance comes from a comparison of these proposed procedures and the procedures employed when federal law enforcement agencies investigate their own officers and agents for misconduct.

Adverse actions for federal employees, including law enforcement officials, are governed by 5 C.F.R. Part 752. The regulations set a floor that various agencies are allowed to go above in designing their discipline proceedings. The rights afforded to federal employees under these procedures are less than the rights S. 1277 / H.R. 2967 would create. Whereas S. 1277 / H.R. 2967 requires a hearing in all cases, (§ 820(h)(2)), the federal regulations only require that the subject employee have an opportunity to answer the allegations either orally or in writing. The current system, which combines state and local due process rights for government employees with the ability to create additional rights as each agency sees fits, mirrors the federal system.

If S. 1277 / H.R. 2967 were enacted, it would result in the situation where an MPD officer and a federal law enforcement official might be working together to police a demonstration in Washington, D.C., but would have very different rights if they were investigated for an allegation of misconduct. This hypothetical poses due process problems because in that situation the two officers are similarly situated, but would not have the same rights.

Finally, the OCCR complaint process begins with a citizen complaint, so there is no risk that a citizen would bring a complaint because of union activities of a particular officer. It is possible that a citizen might file a complaint to try to retaliate against an officer who arrested the citizen, but this provision of the bill seems concerned with officers who are singled out for discipline because of a pattern of aggressive law enforcement. The OCCR process, because it begins with a citizen complaint, would not allow OCCR to focus on a particular officer. Furthermore, every complainant is required to reduce his or her complaint to writing and attest to the truth of all the statements made in the complaint, subject to the penalty of perjury, which reduces the risk of frivolous or retaliatory complaints.

(3) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly;

OCCR agrees that unfair treatment of officers hurts effective law enforcement. We constantly strive to maintain objectivity and fairness. To date, both the leadership of the Fraternal Order of Police (FOP) MPD Labor Committee and individual members of MPD have commented about their satisfaction with the OCCR process.

(4) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

While the lack of labor-management cooperation in disciplinary proceedings might be a problem for some departments, OCCR has a constructive relationship with both the police union and MPD leadership. Leaders of both the FOP and MPD have made positive comments about the integrity and fairness of OCCR's processes. Union problems are not a universal concern for all agencies that would be affected by the bill.

(5) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure--
(i) the due process and political rights of law enforcement officers;
(ii) fair and thorough internal investigations and interrogations of and disciplinary proceedings against law enforcement officers; and
(iii) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants; and
(6) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

Congress certainly has a strong interest in maintaining domestic tranquility; however, passage of this bill would have the opposite effect. The vast majority of MPD officers are honest, hard-working men and women, but there is a minority of officers who do not meet the standards of professionalism required by the public. The provisions of S. 1277 / H.R. 2967 would hurt the domestic tranquility by making it harder for OCCR to fulfill its mandate as a citizen oversight agency charged with ensuring that the citizens of the District of Columbia have an accountable police force.

There is also a civil rights component to S. 1277 / H.R. 2967. Our experience at OCCR and historical patterns nationwide reveal that minority citizens are most frequently the targets of police misconduct. The existence of an independent agency such as OCCR allows all citizens, including minority complainants, to file a complaint without feeling intimidated by participating in a police process. S. 1277 / H.R. 2967 would jeopardize efforts that OCCR has been making to sensitize MPD to the concerns of minority communities in Washington, D.C.

b. Declaration of Policy

Congress declares that it is the purpose of this Act and the policy of the United States to--

(1) protect the due process and political rights of State and local law enforcement officers and ensure equality and fairness of treatment among such officers;

(2) provide continued police protection to the general public;

(3) provide for the general welfare and ensure domestic tranquility; and

(4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

We do not doubt that some police departments have problems with their discipline processes. The one-size-fits-all nature of the proposed bill is, however, too blunt of an instrument to solve these problems. Imposing the same requirements on MPD, the New York City Police Department, and a small rural police department would preempt the ability of these police departments to tailor their procedures to address their individual problems.

Sec. 3. Discipline, Accountability, and Due Process of Officers

a) DEFINITIONS- In this section:

(2) Disciplinary hearing - The term `disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on an alleged violation of law, that, if proven, would subject the law enforcement officer to disciplinary action.

The scope of the definition of "disciplinary hearing" forecloses a major source of the authority of OCCR, MPD, and the internal affairs units of most police departments. A plain language reading of this definition would not allow OCCR to make determinations regarding police misconduct on the basis of violations of MPD general orders, a major source of our authority. For example, many of our cases deal with officers who use inappropriate language. It is a violation of MPD orders to use inappropriate language when dealing with citizens, but is not necessarily illegal. Under this definition, there would be no possibility of discipline when an officer uses inappropriate language.

(4) Investigation - The term `investigation'--

(A) means an action taken to determine whether a law enforcement officer violated a law by a public agency or a person employed by a public agency, acting alone or in cooperation with or at the direction of another agency, or a division or unit within

another agency, regardless of a denial by such an agency that any such action is not an investigation; and
(B) includes--
(i) asking questions of any other law enforcement officer or non-law enforcement officer;
(ii) conducting observations;
(iii) reviewing and evaluating reports, records, or other documents; and
(iv) examining physical evidence.

Similar to the definition of "disciplinary hearing," the bill's definition of investigation would not allow determinations and discipline regarding violations of MPD orders.

(8) Summary Punishment - The term `summary punishment' means punishment imposed--
(A) for a violation of law that does not result in any disciplinary action; or
(B) for a violation of law that has been negotiated and agreed upon by the law enforcement agency and the law enforcement officer, based upon a written waiver by the officer of the rights of that officer under subsection (i) and any other applicable law or constitutional provision, after consultation with the counsel or representative of that officer.

The bill's summary discipline process would adversely affect OCCR in a way that it would not affect MPD because OCCR determines guilt or innocence for each complaint, but plays no role in the level of discipline that is ultimately imposed. Under this section, MPD could avoid holding a hearing by essentially plea-bargaining, while OCCR would have to hold a hearing for every complaint because we do not have authority over the level of discipline, which is necessary for a plea-bargain.

(b) APPLICABILITY-
(1) IN GENERAL- This section sets forth the due process rights, including procedures, that shall be afforded a law enforcement officer who is the subject of an investigation or disciplinary hearing.
(2) NONAPPLICABILITY- This section does not apply in the case of--
(A) an investigation of specifically alleged conduct by a law enforcement officer that, if proven, would constitute a violation of a statute providing for criminal penalties; or
(B) a nondisciplinary action taken in good faith on the basis of the employment related performance of a law enforcement officer.

Under OCCR's procedures, the applicability section poses no problems. The primary type of case OCCR investigates that could result in criminal penalties is the use of unnecessary or excessive force. It is OCCR procedure to first refer these cases to the United States Attorney

for the District of Columbia for possible prosecution. Only if the U.S. Attorney's office chooses not to proceed against the officer does OCCR begin to investigate the case.

> *(d). EFFECTIVE PROCEDURES FOR RECEIPT, REVIEW, AND INVESTIGATION OF COMPLAINTS AGAINST LAW ENFORCEMENT OFFICERS -*
> *(2) INITIATION OF AN INVESTIGATION-*
> *(A) IN GENERAL- Except as provided in subparagraph (B), an investigation based on a complaint from outside the law enforcement agency shall commence not later than 15 days after the receipt of the complaint by--*
> *(i) the law enforcement agency employing the law enforcement officer against whom the complaint has been made; or*
> *(ii) any other law enforcement agency charged with investigating such a complaint.*
> *(B) EXCEPTION- Subparagraph (A) does not apply if--*
> *(i) the law enforcement agency determines from the face of the complaint that each allegation does not constitute a violation of law; or*
> *(ii) the complainant fails to comply substantially with the complaint procedure of the law enforcement agency established under this section.*

The text of this section conflicts with the definitions section. It seems to apply only to law enforcement agencies. Furthermore, the section reinforces the idea that violations of internal MPD guidelines could no longer be a valid basis for discipline.

> *(e) NOTICE OF INVESTIGATION-*
> *(1) IN GENERAL- Any law enforcement officer who is the subject of an investigation shall be notified of the investigation 24 hours before the commencement of questioning or to otherwise being required to provide information to an investigating agency.*
> *(2) CONTENTS OF NOTICE- Notice given under paragraph (1) shall include--*
> *(A) the nature and scope of the investigation;*
> *(B) a description of any allegation contained in a written complaint;*
> *(C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and*
> *(D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.*

OCCR already complies with the notice requirements of the section. An agreement between OCCR and MPD requires OCCR to provide MPD with a least one business week's notice before interviewing an officer. Additionally, the section of the bill that deals with the "name, rank, and command of officer" questioning the subject officer does not apply to OCCR, whose investigators are not sworn personnel.

(f) RIGHTS OF LAW ENFORCEMENT OFFICERS PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN INVESTIGATION- If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

(1) COUNSEL AND REPRESENTATION-

(A) IN GENERAL- Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

(B) PRIVATE CONSULTATION- During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.

(C) UNAVAILABILITY OF COUNSEL- If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

We believe this is a reasonable due process right and have no objections to this provision. OCCR already meets the requirements of this section. MPD officers who come to OCCR to be interviewed are entitled to bring any representative they wish.

(2) REASONABLE HOURS AND TIME- Any questioning of a law enforcement officer under investigation shall be conducted at a reasonable time when the officer is on duty, unless exigent circumstances compel more immediate questioning, or the officer agrees in writing to being questioned at a different time, subject to the requirements of subsections (e) and (f)(1).

We believe this is a reasonable due process right and have no objection to this provision. OCCR only interviews officers during regular business hours. It is therefore possible that an officer who normally works the night shift would have to appear at OCCR for an interview that occurs outside the normal shift. Such a change would not be burdensome because the officer is given at least one week's notice of the interview, and is compensated for the appearance at OCCR, even if it occurs outside his or her normal shift.

(6) REASONABLE TIME PERIOD - Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

The terms of the Collective Bargaining Agreement (CBA) between the FOP and MPD require that rest periods be included in interviews. OCCR adheres to the portions of the CBA that deal with officer interviews.

> *(8) RECORDING-*
> *(A) IN GENERAL- All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be provided to the officer under investigation before any subsequent period of questioning or the filing of any charge against that officer.*
> *(B) SEPARATE RECORDING- To ensure the accuracy of the recording, an officer may utilize a separate electronic recording device, and a copy of any such recording (or the transcript) shall be provided to the public agency conducting the questioning, if that agency so requests.*

OCCR opposes the recording requirement. This section, when combined with the *de facto* requirement that all interviews be recorded so that the subject officer may review the entire record before a hearing (see below) would impose an unreasonable cost on OCCR. We conduct an average of two to three interviews each day. For OCCR to record and transcribe each of these interviews would necessitate either paying thousands of dollars each month for a transcription service or hiring an additional full-time staff person to prepare the transcripts. In a time of local budget cuts, the reality of this requirement would be the elimination of at least one of our six investigator positions. Reducing our investigative staff would have a direct negative effect on our ability to fulfill OCCR's mandate to promptly investigate and resolve police misconduct complaints.

> *(g) NOTICE OF INVESTIGATIVE FINDINGS AND DISCIPLINARY RECOMMENDATION AND OPPORTUNITY TO SUBMIT A WRITTEN RESPONSE-*
> *(1) NOTICE- Not later than 30 days after the conclusion of an investigation under this section, the person in charge of the investigation or the designee of that person shall notify the law enforcement officer who was the subject of the investigation, in writing, of the investigative findings and any recommendations for disciplinary action.*

OCCR believes that the timetable in this section is arbitrary, and it is incompatible with the timelines in the statute and regulations governing OCCR. The OCCR timelines allow a complaint examiner 15 days to determine if a hearing should be held, and an additional 45 days to schedule and complete the hearing. The timelines then allow 30 days after the hearing for complaint examiner to issue a written decision. If any allegations are sustained, the MPD process for determining the level of discipline follows the issuance of a written decision. Under any circumstances, OCCR believes that the timeframe in the bill is unreasonably short, and it is completely incompatible with OCCR's process as it exists.

The notice provision also raises the double standard due process concerns we raised earlier in this analysis. The timetable the provision imposes creates a "speedy adjudication" right that no other public employees enjoy.

> *(h) DISCIPLINARY HEARING-*
> *(1) NOTICE OF OPPORTUNITY FOR HEARING- Except in a case of summary punishment or emergency suspension (subject to subsection (k)), before the imposition of any disciplinary action the law enforcement agency shall notify the officer that the officer is entitled to a due process hearing by an independent and impartial hearing officer or board.*

At present, the complaint examiner has the discretion to hold a hearing if he or she believes the paper record leaves a genuine issue of material fact unanswered. So far, examiners are holding hearings for approximately one of every six complaints, in large part due to the comprehensiveness of the reports of investigations prepared by OCCR. Subject officers are given a copy of the report, along with ample time to submit written objections, with the assistance of counsel if desired. To require a hearing for all cases, no matter how minor the allegation, would cost OCCR approximately an additional $1,000 in court reporting and other fees for each investigation, or an additional $35,000 over the course of one year. Similar to the transcription requirement for interviews, OCCR would be required to make cuts in its investigative staff in order to meet this new requirement.

Beyond the financial cost, there is also a cost for the officers' and citizens' time to hold a hearing for every complaint. Subject officer and witness officers will have to be taken off the street for every hearing, and citizen complainants and witnesses will have to be taken away from their jobs or other obligations to attend the hearing. The increased number of hearings will affect the resources that are available to provide police protection to a jurisdiction, as well as a citizen's willingness to participate in the process as the burden for doing so increases.

> *(2) REQUIREMENT OF DETERMINATION OF VIOLATION- No disciplinary action may be taken against a law enforcement officer unless an independent and impartial hearing officer or board determines, after a hearing and in accordance with the requirements of this subsection, that the law enforcement officer committed a violation of law.*

The wording of this section raises the issue of foreclosing the possibility of disciplining officers for violation of departmental regulations, as opposed to violation of the law.

> *(5) ACCESS TO DOCUMENTARY EVIDENCE AND INVESTIGATIVE FILE- Unless waived in writing by the law enforcement officer or the counsel or representative of that officer, not later than 15 days before a disciplinary hearing described in paragraph (4)(A), the law enforcement officer shall be provided with--*

(A) a copy of the complete file of the pre-disciplinary investigation; and
(B) access to and, if so requested, copies of all documents, including transcripts, records, written statements, written reports, analyses, and electronically recorded information that--
(i) contain exculpatory information;
(ii) are intended to support any disciplinary action; or
(iii) are to be introduced in the disciplinary hearing.

We believe this is a reasonable due process right and do not object to this provision. OCCR provides copies of its report of investigation with all relevant exhibits and documents to the subject officer. However, to require OCCR to include transcripts of all interviews would require OCCR to incur the large costs described above.

(6) EXAMINATION OF PHYSICAL EVIDENCE- Unless waived in writing by the law enforcement officer or the counsel or representative of that officer--
(A) not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of that officer of all physical, non-documentary evidence; and
(B) not later than 10 days before a disciplinary hearing, the prosecuting agency shall provide a reasonable date, time, place, and manner for the law enforcement officer or the counsel or representative of the law enforcement officer to examine the evidence described in subparagraph (A).

OCCR agrees with the provision to the extent that officers may examine physical evidence in cases where the OCCR complaint examiner has determined that there are genuine issues of material fact that necessitate a hearing.

(9) HEARING BOARD AND PROCEDURE-
(A) IN GENERAL- A State or local government agency, other than the law enforcement agency employing the officer who is subject of the disciplinary hearing, shall--
(i) determine the composition of an independent and impartial disciplinary hearing board;
(ii) appoint an independent and impartial hearing officer; and
(iii) establish such procedures as may be necessary to comply with this section.
(B) PEER REPRESENTATION ON DISCIPLINARY HEARING BOARD- A disciplinary hearing board that includes employees of the law enforcement agency employing the law enforcement officer who is the subject of the hearing, shall include not less than 1 law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

This provision imposes costs OCCR simply cannot bear. It requires an agency other than the law enforcement agency to establish and administer the hearing procedures. Most likely, the City of Washington, D.C., would transfer the responsibility of organizing all additional hearings to OCCR. That responsibility would require OCCR to organize and fund up to several hundred more hearings each year, at a cost of approximately $2000 for each hearing. The peer representation provision would alter the hearing process in Washington, D.C., since law enforcement officials do not hear OCCR cases.

> *(11) CLOSED HEARING- A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or to the general public.*

As a police oversight agency, the credibility of OCCR depends on the public's perception that it is an open agency. One of the primary complaints with police misconduct investigations that are handled by police departments is that the public is kept in the dark about the process. Holding open hearings on police misconduct allegations allows the public to see that the District takes police misconduct seriously and contributes to increased public confidence in both MPD and the District's police accountability mechanisms.

> *(15) FINAL DECISION ON EACH CHARGE-*
> *(A) IN GENERAL- At the conclusion of the presentation of all the evidence and after oral or written argument, the hearing officer or board shall deliberate and render a written final decision on each charge.*
> *(B) FINAL DECISION ISOLATED TO CHARGE BROUGHT- The hearing officer or board may not find that the law enforcement officer who is the subject of the hearing is liable for disciplinary action for any violation of law, as to which the officer was not charged.*

To the extent that this section is read to allow for up to 30 days for the final written decision, we believe this requirement is reasonable.

> *(17) FACTORS OF JUST CAUSE TO BE CONSIDERED BY THE HEARING OFFICER OR BOARD- A law enforcement officer who is the subject of a disciplinary hearing shall not be found guilty of any charge or subjected to any disciplinary action unless the disciplinary hearing board or independent hearing officer finds that--*
> *(A) the officer who is the subject of the charge could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct set forth in the charge against the officer;*
> *(B) the rule, regulation, order, or procedure that the officer who is the subject of the charge allegedly violated is reasonable;*

(C) the charging party, before filing the charge, made a reasonable, fair, and objective effort to discover whether the officer did in fact violate the rule, regulation, order, or procedure as charged;
(D) the charging party did not conduct the investigation arbitrarily or unfairly, or in a discriminatory manner, against the officer who is the subject of the charge, and the charge was brought in good faith; and
(E) the proposed disciplinary action reasonably relates to the seriousness of the alleged violation and to the record of service of the officer who is the subject of the charge.

We believe there are multiple problems with this section. The first is that the hearing officer must evaluate the proposed disciplinary action before finding an officer guilty. OCCR's complaint examiners may only make liability determinations, and have no involvement in determining the proposed disciplinary action, so they cannot meet the requirements set in the bill. Another problem is that while OCCR has the statutory authority to recommend changes in rules and procedures to MPD, the independent complaint examiners are not in the proper position to pass judgment on the reasonableness of MPD rules.

(19) COMMISSION OF A VIOLATION-
(A) IN GENERAL- If the officer who is the subject of the charge is found to have committed the alleged violation, the hearing officer or board shall make a written recommendation of a penalty to the law enforcement agency employing the officer or any other governmental entity that has final disciplinary authority, as provided by applicable State or local law.
(B) PENALTY- The employing agency or other governmental entity may not impose a penalty greater than the penalty recommended by the hearing officer or board.

This section conflicts with the procedures of OCCR as an independent police oversight agency. OCCR complaint examiner decisions do not recommend the penalty.

(j) SUMMARY PUNISHMENT- Nothing in this section shall preclude a public agency from imposing summary punishment.

As explained above, we believe that the summary punishment provision creates a burden on citizen oversight agencies that is not shouldered by police departments. OCCR does not have the ability to plea bargain with officers regarding disciplinary actions and would have to hold hearings in relatively minor cases that would often result in a summary punishment agreement by a police department.

(n) DECLARATORY OR INJUNCTIVE RELIEF- A law enforcement officer who is aggrieved by a violation of, or is otherwise denied any right afforded by, the Constitution of the United States, a State constitution, this section, or any administrative rule or

regulation promulgated pursuant thereto, may file suit in any Federal or State court of competent jurisdiction for declaratory or injunctive relief to prohibit the law enforcement agency from violating or otherwise denying such right, and such court shall have jurisdiction, for cause shown, to restrain such a violation or denial.

We believe this section would interfere with the ability of OCCR to properly investigate and adjudicate cases. Under this section, any officer could disrupt proceedings by filing for an injunction. The ability to stop a disciplinary proceeding creates another double standard for law enforcement officers. All other public employees do not enjoy this right.

(p) STATES' RIGHTS-
(1) IN GENERAL- Nothing in this section may be construed--
(A) to preempt any State or local law, or any provision of a State or local law, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that confers a right or a protection that equals or exceeds the right or protection afforded by this section; or
(B) to prohibit the enactment of any State or local law that confers a right or protection that equals or exceeds a right or protection afforded by this section.
(2) STATE OR LOCAL LAWS PREEMPTED- A State or local law, or any provision of a State or local law, that confers fewer rights or provides less protection for a law enforcement officer than any provision in this section shall be preempted by this section.

We believe it is misleading to refer to a section of a bill that preempts many state and local police accountability mechanisms as a "states' rights" provision. As explained above, S. 1277 / H.R. 2967 denies state and local government entities the right to tailor police accountability procedures for their unique situations.

(q) COLLECTIVE BARGAINING AGREEMENTS- Nothing in this section may be construed to--
(1) preempt any provision in a mutually agreed-upon collective bargaining agreement, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2001, that provides for substantially the same or a greater right or protection afforded under this section; or
(2) prohibit the negotiation of any additional right or protection for an officer who is subject to any collective bargaining agreement.

The passage of S. 1277 / H.R. 2967 would be highly disruptive to existing collective bargaining agreements. References to disciplinary procedures in these agreements are the result of lengthy and complicated negotiations. The bill would preempt many provisions in CBAs and have widespread effects on future bargaining sessions.